Supreme Court, U.S.
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No. 01-1061

In the
Supreme Court of the United States

PROGRAMMED LAND, INC., ET AL.,
Petitioners,

v.

PATRICK O'CONNOR, IN HIS CAPACITY AS TREASURER AND AUDITOR FOR HENNEPIN COUNTY, MINNESOTA, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

BRIEF OF *AMICUS CURIAE* MINNESOTA CHAMBER OF COMMERCE

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QUESTION PRESENTED

1. Whether a state regime for the refund of illegal taxes violates the Due Process Clause when taxpayers are not provided, prior to the running of the statute of limitations for the filing of a challenge, with notice from which they can determine that the taxes are illegal.

2. Whether tax officials violate the Equal Protection Clause when they erroneously tax some taxpayers at a higher rate than they tax other, identically situated taxpayers.

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INTEREST OF *AMICUS CURIAE*

Pursuant to Rule 37 of the Rules of the Supreme Court, the Minnesota Chamber of Commerce (the "Chamber") respectfully submits this brief as *amicus curiae* in support of Petitioners.[1] The Chamber is comprised of almost 3200 member businesses of all sizes, representing Minnesota industry throughout the State. The vast majority of members of the Chamber own real property, much of which is subject to the same property tax scheme at issue in this case. Beyond their particular interests, however, the members of the Chamber of Commerce, and all of the citizens of the State of Minnesota, have a public interest in ensuring that the property tax system is administered consistent with the laws, the Constitution, and principles of fairness and justice.

The Minnesota Supreme Court held that Minn. Stat. § 278.01 is the exclusive remedy by which property owners could challenge clerical errors made by the counties when calculating property taxes on commercial and industrial properties, and disallowed any recovery of property taxes Petitioners overpaid based upon undisclosed calculation errors by county tax officials. In doing so, the court disregarded established principles of due process,

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[1] Pursuant to Rule 37.6, the Chamber states that no counsel for a party has authored this brief in whole or in part and that no person or entity, other than the Chamber, its members, or its counsel has made a monetary contribution to the preparation or submission of this brief. The Chamber has received written consents to file this brief from the Petitioners and Respondents, which have been filed with the Clerk.

destroyed the substantive rights of the Petitioners to be taxed at lawful rates, and approved "bait and switch" tactics engaged in by the Minnesota taxing authorities – conduct long prohibited by this Court. This Court's review is necessary to correct the decision of the Minnesota Supreme Court, which, if not corrected, will likely be used to deprive other taxpayers in Minnesota and other States of the due process rights guaranteed by the United States Constitution.

REASONS FOR GRANTING WRIT

This case presents important issues that significantly affect Minnesota businesses and commercial property taxpayers, and their rights to remedies for payment of illegal or unconstitutional taxes. The facts of this case are well set forth in the Petition, and the Chamber will not reiterate those facts except to emphasize the following: it is undisputed that the State tax system under Minn. Stat. § 278.01 does not provide notices to property taxpayers from which they can determine whether a county is applying the legal tax rate to their property. In February of a given year, taxpayers are provided with a notice describing the classification of the property and the assessed value. A tax rate is not specified on this notice nor can it be deciphered from the information provided. A second notice is provided again in November, but again this notice does not contain any information on the tax rate applied to the property. The county does not send out tax bills until March 31 of the following year. These tax bills likewise do not state the tax rates applicable to the property. The total tax bill for a particular property reflects a tax liability based on local extension rates and tax rates. There is no method by which the property owners can ascertain the tax rate from the tax bill. Although the Minnesota Supreme Court held to the contrary, Minn. Stat. § 278.01 cannot be the exclusive remedy for clerical errors in

the tax rates when the basis for the challenge *is unknown and unknowable within the time limit of the statute.*

In addition to all of the reasons stated in the Petition, this Court should grant further review because the rights of Minnesota business owners to recover illegally exacted taxes have been dramatically curtailed in violation of the Due Process Clause. In the Chamber's view, this case does not represent a one-time occurrence of property owners being denied refunds for overpayment of taxes, but marks a dramatic shift in Minnesota against the rights of property owners to be subject to a fair, non-arbitrary tax system.

I. MINNESOTA BUSINESS OWNERS HAVE NO MEANINGFUL REMEDY WHEN PROPERTY TAXES ARE OVERPAID BASED ON THE MISTAKEN APPLICATION OF TAX RATES

As interpreted by the Minnesota Supreme Court, the procedural and time limitations of Minn. Stat. § 278.01 for seeking refunds of property taxes that are overpaid based on the undisclosed, mistaken application of tax rates cannot withstand scrutiny under the Due Process Clause. The fundamental error of the decision below is the court's unsupported assertion that the Petitioners had an opportunity to challenge the tax within the timeframe provided in Minn. Stat. § 278.01, when it is undisputed that the taxpayers could not have discovered the mistaken application of the tax rate from any notice they received. This is a blatant violation of fundamental notions of due process. *See Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (holding that due process requires notice "of such nature as reasonably to convey the required information . . . and it must afford a reasonable time for those interested to make their appearance").

This Court has long held that taxpayer must have some meaningful opportunity to challenge illegal taxes and recover funds paid as illegal taxes. *See, e.g., Atchison, T. & S.F.R. Co. v. O'Connor*, 223 U.S. 280, 285 (1912) ("It is reasonable that a man who denies the legality of a tax should have a clear and certain remedy"); *Ward v. Love County Board of Comm'rs*, 253 U.S. 17 (1920) ("To say that the county could collect these unlawful taxes by coercive means and not incur any obligation to pay them back is nothing short of saying that it could take or appropriate [property] arbitrarily and without due process of law"); *Carpenter v. Shaw*, 280 U.S. 363, 369 (1930) ("a denial by a state court of a recovery of taxes exacted in violation of the laws or Constitution of the United States by compulsion is itself in contravention of the Fourteenth Amendment"); *Montana Nat'l Bank of Billings v. Yellowstone County*, 276 U.S. 499, 504 (1928) (bank enjoyed "an undoubted right to recover" the moneys it paid under a discriminatory tax); and *Iowa-Des Moines Nat'l Bank v. Bennett*, 284 U.S. 239, 247 (1931) (tax that violated the Equal Protection Clause can be corrected only "if either their competitors' taxes are increased or their own reduced").

More recently this Court has had the opportunity to expand on these holdings. In *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco,* 496 U.S. 18 (1990), the Court was faced with Florida's refusal to refund taxes paid by wholesale liquor distributors who successfully challenged a Florida excise tax that gave preferential treatment to beverages that were manufactured from Florida-grown citrus and other agricultural crops and then bottled in state. The Florida Supreme Court reasoned that no refund was necessary because of "equitable" considerations and the State had collected the tax under the good faith presumption that the tax was valid. *Id.* at 26. A unanimous Court reject the

State's contention that due process did not require return of the taxes collected, and held:

> If a State places a taxpayer under duress promptly to pay a tax when due and relegates him to a postpayment refund action in which he can challenge the tax's legality, the Due Process Clause of the Fourteenth Amendment obligates the State to provide meaningful backward-looking relief to rectify any unconstitutional deprivation.

Id. at 31 (footnotes omitted). To satisfy the requirements of the Due Process Clause, a State must provide not only a meaningful opportunity to challenge the accuracy and legal validity of their tax obligation, but also a "clear and certain remedy," for any erroneous tax collection. *Id.* at 39.

McKesson was followed by *Reich v. Collins*, 513 U.S. 106 (1994), where the Georgia Supreme Court had rejected a taxpayer's claim under a general refund statute, dismissing any due process concerns because a predeprivation remedy was available. This Court reversed because

> no reasonable taxpayer would have thought that [the predeprivation procedures] represented, in light of the apparent applicability of the refund statute, the exclusive remedy for unlawful taxes.

Id. at 111. Before the state court ruling, taxpayers had no way of knowing that they could not pursue a postpayment refund. The Court emphasized that a state "has the flexibility to maintain an exclusively predeprivation remedial scheme, so long as that scheme is 'clear and certain.'" *Id.* at 110-111. On the other hand, states may not "bait and switch" by

offering "what plainly appears to be a 'clear and certain' postdeprivation remedy and then declare, only after the disputed taxes have been paid, that no such remedy exists." *Id.* at 108, 111.

This Court was again required to invalidate a state taxing scheme in *Newsweek, Inc. v. Florida Dept. of Revenue*, 522 U.S. 442 (1998). In violation of the First Amendment of the Constitution of the United States, Florida exempted newspapers, but not magazines, from sales tax. Newsweek, a magazine publisher, sought a refund of the taxes paid under the illegal scheme. The Florida court denied the request, holding that Newsweek had a meaningful predeprivation remedy, despite the fact that Florida law had long permitted taxpayers to seek refunds for taxes paid under an unconstitutional statute. This Court rejected the Florida court's sudden elimination of a longstanding procedure for claiming refunds for improperly paid taxes, and noted:

> While Florida may be free to require taxpayers to litigate first and pay later, due process prevents it from applying this requirement to taxpayers, like Newsweek, who reasonably relied on the apparent availability of a postpayment refund when paying the tax.
>
> Newsweek is entitled to a clear and certain remedy and thus it can use the refund procedures to adjudicate the merits of its claim.

Id. at 444-45.

These principles of law were completely ignored by the Minnesota Supreme Court. There can be little room to

doubt that the Minnesota Supreme Court's opinion flouts this Court's precedents on refunds in illegal tax cases.[2]

As in *Reich* and *Newsweek*, "no reasonable taxpayer would have thought" that they must contest the amount of their property taxes before they possess information that the taxes were improperly calculated. Indeed, Minnesota law requires county auditors to charge taxpayers "the proper amount of taxes." Minn. Stat. § 274.09. Minnesota property taxpayers, therefore, have a right to rely upon the correctness of their tax bills. *See Cooperative Power Ass'n v. Astleford*, 386 N.W.2d 313, 315 (Minn. Ct. App. 1986).

Furthermore, nowhere in Minn. Stat. § 278.01 does the legislature refer to the assessment and levy process as including the mathematical calculation of tax rates. The statute explicitly refers only to assessments or the tax levied. The Minnesota Supreme Court has noted that a taxpayer's remedies for relief on the basis that the real property has been unfairly or unequally assessed are statutory and a remedy is available under Minn. Stat. § 278.01. *See Evanson v. Comm'r of Taxation*, 280 Minn. 559, 561, 159 N.W.2d 259, 261 (1968). The same court has also noted that an appeal under Minn. Stat. § 278.01 is the exclusive remedy to contest unfair, unequal, or erroneous valuation. *See State v. Elam*, 250 Minn. 274, 84 N.W.2d 227 (1957). Further, pointing to Minn. Stat. § 278.01, the supreme court has stated "Minnesota law provides a mechanism for a property owner to contest a county's assessment of real estate." *BFW Co. v. County of Ramsey*, 566 N.W.2d 702, 704 (Minn.

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[2] It appears that the States in general have had difficultly following *McKesson* and its progeny. *See* Petition at 22 n.13.

1997). In short, before this case, the Minnesota Supreme Court has consistently read Minn. Stat. § 278.01 as applicable to disputes concerning valuation, classification and special assessment, not errors in the application of tax rates. The Minnesota Supreme Court changed the rules in the middle of the game, in clear violation of due process by holding that Minn. Stat. § 278.01 was the exclusive remedy available to Petitioners. *See Reich*, 513 U.S. at 110-11, and *Newsweek*, 522 U.S. at 444-45.

Even under the broadest interpretation, a challenge to the tax rate cannot be construed as a challenge to the tax assessed or levied. The taxpayers' dispute in this case has nothing to do with the assessment process and is wholly unrelated to the process of determining the estimated market value or the classification of a property. Accordingly, on its face, tax rate disputes are clearly outside the domain of Minn. Stat. § 278.01. Before this case, no reasonable taxpayer would assume that the statute applied to discovery of errors that were not knowable prior to the expiration of the time to challenge the tax, particularly given that Minnesota law explicitly allows taxpayers to rely upon county tax officials' proper execution of their statutory duty to impose taxes based upon lawful rates.

Finally, the design of this statute is for an appeal of an assessment, based on value and classification, not a challenge to the tax rate. Under the statute, taxpayers have one year to petition on the valuation and classification of the property. However, a tax bill often is not sent out March 31, when the time to file a petition under Minn. Stat. § 278.01 is either about to expire or has expired. The Minnesota Supreme Court determined that the state legislature provided taxpayers with only one year to appeal an assessment when the error could not be discoverable in the one-year period. The court's strained reading of the statute leaves one

conclusion: that the legislature deliberately failed to provide a fair and meaningful opportunity to dispute the tax rate. The Minnesota Supreme Court's decision is not only contrary to principles of fairness and justice, but also unconstitutional as failing to provide a fair opportunity to dispute the erroneous tax rate. *McKesson*, 496 U.S. at 31 ("The Due Process Clause . . . obligates the State to provide meaningful backward-looking relief to rectify any unconstitutional deprivation.").

As Justice Stringer fittingly noted in his dissent: "Applying the statute of limitations set forth in section 278.01 to a claim that becomes knowable on the very date of expiration is an 'absurdity too gross to be insisted on.'" (App. 26a (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)). Further review by this Court is warranted.

II. THE MINNESOTA SUPREME COURT HAS NOT ONLY DEPRIVED PETITIONERS OF THEIR DUE PROCESS RIGHTS, BUT ELIMINATED THE AVAILABILITY OF COMMON LAW REMEDIES TO FUTURE TAXPAYER LITIGANTS

A. Common Law Remedies Have Been Available Historically to Minnesota Taxpayers

The Chamber is particularly concerned about the Minnesota Supreme Court's decision because it eliminates substantive rights that Minnesota property taxpayers had relied on for at least 100 years. Before this case, it was unquestioned that, in the interest of fairness and justice, equitable remedies must be available to taxpayers who have overpaid their taxes due to an error by taxing authorities, which was not discoverable by the taxpayers. The Minnesota Supreme Court specifically reached this

conclusion in *Wheeler v. Board of Comm'rs of Hennepin County*, 87 Minn. 243, 91 N.W. 890 (1902) (taxes paid based on erroneous statement submitted by county auditor are not voluntary or made without mistake of fact and accordingly are recoverable as excessive payment).

As noted by the Petitioners, *Wheeler* was good law and had been relied on by the Minnesota Court of Appeals as recently as 1986. *See Cooperative Power Ass'n v. Astleford*, 386 N.W.2d 313, 315 (Minn. Ct. App. 1986). The Minnesota Supreme Court, however, effectively overturned *sub silentio* its decision in *Wheeler*, and eliminated important common law rights taxpayers had enjoyed for decades.[3]

Not only did the court change the rules mid-game, a classic "bait and switch" prohibited in *Reich* and *Newsweek*, the court made it nearly impossible for future litigants to be successful when they make a claim for a tax refund when they have paid in reliance upon tax information and demands provided by the State or its subdivisions.

The statutory scheme for imposing property taxes has not changed. Therefore, the net effect of the Minnesota Supreme Court's decision is to allow the government to act

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[3] This action not only violated the Petitioners' due process rights, but also violated the Remedies Clause of the Minnesota Constitution. Minn. Const. Art. I, § 8. The Remedies Clause prohibits the legislature from eliminating those remedies that vested at common law. *Olson v. Ford Motor Co.*, 558 N.W.2d 491 (Minn. 1997). Taxpayers had a vested right to recover property tax overpayments made under a mistake of fact since *Wheeler* in 1902. The legislature could not have eliminated this remedy when it enacted Minn. Stat. § 278.01 in 1935.

unlawfully without assuming any duty to undo deprivations caused by the government's own failure to comply with the law. It also shifts the burden to taxpayers to discover illegalities before an arbitrary deadline or forfeit any opportunity to seek redress of undisclosed and improper actions by government officials charged with enforcing the laws uniformly.

B. Common Law Equitable Remedies Should Be Available to Taxpayers Who Have Overpaid Property Taxes Based on Miscalculation of Tax Rates by the Counties

In the interest of fairness and justice, equitable remedies must be available to taxpayers who have overpaid their taxes due to an error by taxing authorities, which was not discoverable by the taxpayers. As noted, supra, the Minnesota Supreme Court specifically reached that conclusion in *Wheeler*. There is no reason the same result should not be reached here.

A tax payment is not considered voluntary when made under a mistake of fact. *Atchison, T. & S.F.R. Co. v. O'Connor*, 223 U.S. 280 (1912), (holding that a taxpayer pays "under duress" when he proffers a timely payment merely to avoid a "serious disadvantage in the assertion of his legal ... rights" should he withhold payment and await a state enforcement proceeding to challenge the tax scheme's validity "by defense in the suit.") Such a mistake may consist of some official action by the tax-collecting officer, the correctness of which the taxpayer may rely upon. *Wheeler*, 91 N.W. at 890. When a mathematical error is made, it can and should be corrected *whenever it is discovered.*

Allowing equitable actions to correct mere clerical errors in tax bills will cause no harm to the tax system. First, actions to correct mathematical errors are not directed at the adjudicative and fact intensive process of assessment. That procedure, and challenges to what is essentially a fact-finding process, may properly be limited in time and scope. This is what Minn. Stat. § 278.01 does. However, challenges based on clerical errors are not the same, and need not be subject to the same limitations.

The rule concerning judgments in civil litigation provides a good analogy. Courts have broad powers to correct clerical mistakes, but narrowly circumscribed powers to modify the merits of judgments once they become fixed. The Federal Rules of Civil Procedure allows for correction of clerical errors at any time. Rule 60(a) provides in relevant part as follows:

> Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court *at any time* of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

Fed. R. Civ. P. 60(a) (Emphasis added.)

There is no requirement in Rule 60(a) of any showing of "good cause", nor are there any time limits for seeking correction of a clerical mistake. *See, e.g., Chavez v. Balesh*, 704 F.2d 774, 776 (5th Cir. 1983). The reasoning behind the rule is obvious – although judgments should be final, erroneous judgments should be corrected when the error is merely clerical because judgments are significant public records having a profound effect on people and their real and personal property. This Court has noted the fundamental principles attending the finality of judgments. *Arizona v.*

California, 460 U.S. 605 (1983). Notwithstanding this principle, even where a case has been reduced to a final and legally binding judgment, the law recognizes that it must be possible to correct clerical and mathematical errors in the judgment at any time. The Minnesota Supreme Court failed to recognize that clerical errors specifically include a mistake in the judgment resulting from miscalculation. *See Knappen v. Freeman*, 47 Minn. 491, 50 N.W. 533 (1891). Moreover, clerical errors may be corrected even after the time to appeal the judgment has expired. Fed. R. Civ. P. 60(a).

This treatment of clerical error is in sharp contrast to the treatment of non-clerical error under Fed. R. Civ. P. 60(b). When adjudicative error is claimed, for instance, that the judgment is not supported by the evidence or that there were procedural errors in reaching the judgment, Rule 60(b) imposes strict time limits for challenges to the judgments, and allows those challenges only on very narrowly defined grounds. In this regard, Rule 60(b) is the functional equivalent of Minn. Stat. § 278.01.

This difference in treatment of clerical error and adjudicative error is a reflection of the important societal need for the finality of judgments, a need highly akin to the need for finality in the scheme of taxation. Allowing equitable relief in cases of claimed clerical error in tax computation is analogous to allowing relief from a judgment under Rule 60(b) for mere clerical error. In both instances, a narrow exception is recognized to the otherwise controlling rules of finality, in order to ensure a system that is neither arbitrary nor unfair, but only appropriately final.

CONCLUSION

The Minnesota Chamber of Commerce respectfully asks this Court issue a writ of certiorari to review the decision of the Minnesota Supreme Court.

Respectfully submitted,

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